

Written Statement of
Joseph Acker
President
Synthetic Organic Chemical Manufacturers Association
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Committee on Government Reform
And the
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
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Introduction

Mr. Chairman, members of the Committee, I appreciate the invitation to speak with you today regarding paperwork burdens on small businesses, and in particular the Small Business Paperwork Relief Act of 2002. I am the president of the Synthetic Organic Chemical Manufacturers Association, or SOCMA, a trade association that represents specialty chemical manufacturers. Our members have chemical manufacturing facilities across the United States, making raw materials and ingredients used in a wide array of products, including pharmaceuticals, agricultural products, food products,

plastics, textiles, and more. SOCMA member companies are entrepreneurs in the truest sense of the word.

There are two common methods used to make chemicals: batch processing and continuous processing. SOCMA companies are mainly involved in batch processing, in which chemists mix discrete quantities of chemicals under very specific conditions to yield a desired compound. By contrast, continuous processes use constant, around-the-clock feeds of the reactant chemicals to yield a continuous stream of a desired substance, usually a commodity chemical bought and used in bulk. The batch process is completed on a relatively small scale and may require multiple steps. Batch processing allows manufacturers to produce highly functionalized and specialized chemicals using complex chemistry that is not amenable to continuous production. Another benefit of batch processing is that unlike other types of chemical companies, batch producers can make hundreds of different compounds in a single year.

SOCMA members make many of the specialized and technically-complex molecules that larger chemical companies use as key building blocks for their products. Approximately seventy per cent of our 280 members are small businesses as defined by the Small Business Administration. As small businesses operating in a very competitive economy, SOCMA members also bear a disproportionate share of regulatory requirements. The Paperwork Relief Act establishes significant steps towards reducing a number of the burdens felt by the small business community. Ensuring the viability of

small businesses is crucial to our economic growth. As Department of Commerce Secretary Evans said recently, small businesses create seventy percent of all new jobs.

SOCMA has always been actively involved in matters that affect small businesses. SOCMA staff regularly attend and present at Small Business Administration roundtables focusing on environmental and employee safety issues. SOCMA annually hosts a breakfast for the House Small Business Committee and representatives of the small business community. We support implementation of the Small Business Paperwork Relief Act of 2002 because it requires federal agencies to take steps not only to reduce paperwork burdens, but to address the burdens that fall on small businesses in particular.

The Problem Defined

I'd like to relate what I have said about the paperwork burden on small businesses by relating some of my own personal experiences. Before becoming the president of SOCMA, I spent over thirty years in industry, most recently as president and CEO of Danchem Technologies, a small custom chemical manufacturing company in Danville, VA. We made custom chemicals on a contract basis in addition to a line of textile chemicals. We had approximately twenty million dollars per year in sales, and employed just over 100 workers, many of whom were highly skilled and well-compensated. Having been in their shoes for much of my career, I clearly appreciate our members' concerns about the regulatory burden.

Our member companies, by virtue of being small businesses, are at an inherent disadvantage. Unlike many companies in our highly-regulated industry, they often have no support from a large corporate structure. In many cases the company, corporate offices and manufacturing processes, are at a single site. If they want legal or technical advice, they almost always have to hire outside assistance. Further, the plant employees, especially those working in environment, safety and health, will often wear multiple hats and will have fewer resources with which to work than will the larger companies. These conditions make it more expensive and more difficult to understand and comply with the many federal, state, and local regulations that apply to the chemical industry.

The reason I earlier highlighted the distinction between batch and continuous manufacturing is that batch manufacturers bear a special burden associated with their process flexibility. Batch manufacturing is a flexible industry – a company's customer base shifts regularly. Consequently, a company's product lines will fluctuate throughout the year, and may include dozens, or even hundreds, of different products. Regulatory requirements associated with each product or process, therefore, add significant paperwork burdens to batch manufacturing. For example, under the Toxic Substances and Control Act (TSCA), SOCMA member companies will be more likely to file numerous inventory update reports than would a much larger company that focuses its manufacturing on the same few products year after year.

The point that I am trying to emphasize is that the size of the site versus number of applicable regulations is not a linear relationship. Consider again my former company as an example to illustrate this point. Danchem is a single-facility specialty-batch manufacturer with approximately 110 employees, only one of whom is assigned full-time to ensuring compliance with environment, safety and health regulations. This one facility is subject to more than 150 environmental regulatory conditions. Even more relevant to today's hearing is that the company is required to submit more than thirty-eight reports relating to these regulations each year to federal, state, and local officials. This is an enormous and unwieldy burden, and it is a significant drag on productivity.

Implementation of the Act

The Act establishes some positive initiatives that, as implemented, will improve agency coordination and communication, and will ultimately increase awareness of the problem of paperwork burden. There are several specific aspects of the Act and the recently released report of the Small Business Paperwork Relief Act Task Force that I would like to focus on for the remainder of my time.

I am particularly interested in the establishment of a single agency point of contact to act as a liaison between the agency and small business concerns, which is discussed in both the 2002 Act and in the Task Force report. We have had some experiences with the single-contact concept, and I'd like to share some of the positives and negatives that we have observed. The Environmental Protection Agency serves as an

excellent example here. As I'm sure you are aware, EPA has a small business ombudsman that serves as a conduit between the small business community and EPA, a role very similar to what is described in the Act.

The EPA ombudsman has been very effective in disseminating information to a broad audience and in facilitating meetings between small business interests and Agency officials on key EPA initiatives. But, as was stated in recommendation four of the Task Force Report, the single-point-of-contact concept has certain limitations. Because there are so many small business interests with very diverse characteristics, the ombudsman has not been as effective at addressing industry-specific concerns. In this era of specialized regulations designed to address very specific problems, that becomes quite important.

SOCMA has also been involved with the Sector Strategies Division in EPA's Office of Policy, Economics, and Innovation. Through this program, particular industries have been identified and assigned a staff contact who serves as the Agency's "expert" on that particular industry sector. In that role, the contact works with program offices and with the industry sector representatives to open the lines of communication, and to ensure that the sector specific characteristics and concerns are addressed right from the beginning of the rulemaking process. Specialty batch chemical manufacturing is one of these sectors and has been since the program began. This has been a very positive experience for us so far. One of our biggest successes with the sector program was a joint workshop held in September 2002, which brought representatives of the specialty

batch chemical industry together with staff from several different offices within EPA, to educate them on our industry niche, the associated characteristics, and the special hurdles we face. It was clear that many agency staff members were unaware of the significant distinctions between specialty batch manufacturing and the continuous processes used at large commodity chemical manufacturers. Education is a key component of our advocacy, and to reach so many regulators at one time was an invaluable experience. That workshop has led to a number of other successful efforts.

For example, SOCMA just finished collaborating with the EPA on an Environmental Management System guidance for specialty batch manufacturing that will serve as an integral part of the Responsible Care Management System. These management systems foster continuous improvement in the processes and actions that a facility undertakes to meet its environmental, safety and health obligations. EPA also assembled a catalog of available voluntary programs that may be available to SOCMA members. In return, SOCMA provided EPA with valuable data on our sector and has helped make the rulemaking process more collaborative and less contentious. Not only are rule writers aware of our sector, but we are able to engage in the rulemaking process right from the start. This obviously goes far beyond the scope of paperwork reduction, but it demonstrates the real benefits that can be achieved by establishing these points of contact.

One of the more frustrating burdens that I encountered during my time in industry is the numerous instances of overlapping jurisdiction and regulation by various agencies,

both within the federal government, and between the federal, state, and local authorities. This problem often arises when a company needs further information regarding its obligations and it is unclear which agency is responsible. I specifically remember instances of confusion on my staff regarding EPA regulations that seemed to overlap with those from Department of Transportation. Companies end up spending a lot of time and money trying to clarify the requirements and jurisdictional questions. These resources would be much better spent on research and development or newer equipment. Proposed laws such as HM-223, which will concede to local authorities Department of Transportation jurisdiction over segments of hazardous materials shipping, and will only add to the existing confusion. Even more frustrating is when a company is forced to report the same information in multiple reports to multiple regulators, a point I will return to momentarily.

The Small Business Paperwork Relief Act Task Force specifically recommended broadening and improving partnerships among agencies with similar or overlapping information requirements. These partnerships would play a valuable role in eliminating duplicative reporting and overlapping requirements among various agencies, and between the federal government and state and local governments. This improved coordination would substantially reduce the paperwork burden on the regulated community. It would also promote increased collaboration among these agencies. It would be great if EPA's sector program could be replicated in other agencies. Then, the various agency representatives for a particular sector could meet regularly and eliminate regulatory overlap.

One example where EPA has taken positive steps to assess the burden of regulation and relieve that burden is under the Resource Conservation and Recovery Act. In its burden reduction proposal, EPA has put forth some very good, albeit rather limited, initiatives to eliminate redundancy and extraneous reporting within the program. For example, this proposal would eliminate duplicative training requirements between OSHA and EPA. It would also eliminate the need to maintain non-essential records on employee training, it reduces record retention provisions for some records – very beneficial to sites with limited storage capacity, and it streamlines reporting requirement for several other provisions. This proposal is a positive step because EPA is reviewing and re-thinking old regulations to eliminate unnecessary requirements. SOCMA is encouraging EPA to finalize this rule, and we would also encourage similar reviews of other dated regulations.

Another of the Task Force's recommendations, simplifying and unifying electronic forms, is a good one, but any initiatives must be implemented with the small business user in mind. A cautionary tale might be found in EPA's attempts in a past proposed rule to reduce the paperwork burden by establishing voluntary procedures for electronic recordkeeping and reporting. Other problems aside, in order to make use of electronic recordkeeping and reporting, facilities would have to adhere to very demanding and, in many cases, infeasible computer hardware and software requirements. All records would have had to be maintained in a form that could not be altered without detection. There is no readily available commercial product that can achieve this.

Records would have needed to include traceable audit trails, another difficult-to-find feature that is not available on programs currently in use. The technology requirements for reporting information to EPA was equally daunting. While this was intended to be a voluntary program, the point is that it is far from accessible to small businesses. In requiring sophisticated tracking and encryption capabilities, EPA priced a potentially large burden reduction opportunity right off the market for most small businesses. As another example, EPA is attempting to create a uniform hazardous waste manifest system that harmonizes current state and federal systems and eliminates extraneous data that is currently being collected. Again, technology and affordability concerns must be addressed in order to ensure widespread use among small businesses. The burden of regulation cannot be assessed on the basis of resources available at large multi-national companies. One size does not fit all.

Room for Improvement

Much has been done to help focus regulators' attention on the costs of new rules to small businesses through the Regulatory Flexibility Act, the Small Business Regulatory Enforcement and Fairness Act, and associated Executive Orders, but the applicability language in these rules require that a new rule "may have a significant economic impact on a substantial number of small entities ..." Undefined terms like "significant impact" and "substantial number" give the agencies a lot of leeway in applying RFA. Further, many new rules are tailored to address specific issues, and so the chances that a rule is going to have a significant impact or affect a substantial number of

entities is greatly reduced. This means that a number of rulemakings escape RFA scrutiny, even though, as demonstrated by the oft-cited Crain and Hopkins analysis, many of these rules will adversely affect small businesses in ways far greater than they would affect larger businesses in the same industry.

This study titled, “The Impact of Regulatory Costs on Small Firms”, was sponsored by the Small Business Administration in 2001. It found that environmental and tax regulations in particular had disproportionate impacts on small businesses.¹ It also found that the gap between small and large firms in cost-per-employee of complying with these regulations is growing.

Another recent study prepared for the National Association of Manufacturers attempted to measure how costs of regulatory compliance affect the competitiveness of U.S. companies.² This study found that the total compliance burden, including environmental, economic, workplace, and tax compliance, amounted to a twelve percent excise tax on manufacturing production. Though it addressed costs beyond those associated with paperwork, this study is a reminder that we need to be cognizant of the impact that regulatory actions, which inevitably include paperwork requirements, have on the U.S. economy. One recommendation from the study was to implementing results-based regulations that allow manufacturers flexibility in determining how best to comply – a principle that SOCMA fully supports.

¹ W. Mark Crain and Thomas D. Hopkins, The Impact of Regulatory Costs on Small Firms, RFP No. SBAHQ-00-R-0027 (2001).

² Jeremy A. Leonard, How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness, prepared for The Manufacturing Institute of the National Association of Manufacturers (2003).

An additional area for improvement relates to what I was speaking about earlier. One phenomenon that we have come across is that when agencies are engaged in rulemaking and they opt to go on site visits to educate themselves about those that they intend to regulate, they will often visit the larger companies. This is not so surprising, as the larger companies are the ones with more recognizable names, they are more likely to have staff in Washington to work with the agencies on developing rulemakings, and they are the ones with more on-site resources to devote to hosting a visit from a regulator. The problem is that we often end up with a rule that addresses the particular concerns of larger companies, but consequently either does not address the distinct concerns of small businesses, or even ends up working against them.

Finally, an increase in resources allocated to compliance assistance would address numerous problems, paperwork reduction among them. SOCMA, like the majority of our members, is a small business. We have limited staff and financial resources that we can allocate toward providing compliance assistance. But increasingly complex and technical rules require examples and explanations to help the regulated community understand their obligations. Small businesses require compliance assistance, but, like anything else, assistance providers must keep their needs in mind. Too often the compliance assistance is longer than the rule, little help to an overworked environment, safety and health technician.

In closing, if regulators can take more time to learn about the industries they are regulating, and if they reach out to interested parties as early as possible, then there will be opportunities to reduce burden and eliminate regulatory overlap. Thank you for your support and leadership in addressing a critical problem. We look forward to working with this Committee and with any government official to try to reduce paperwork and other burdens.

I will be pleased to answer any questions you might have.